

# **EXHIBIT 14**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

Christopher Corcoran, et al.,

Plaintiffs,

v.

CVS Pharmacy, Inc.,

Defendant.

Case No. 15-cv-03504-YGR

CLASS ACTION

**DECLARATION OF  
JOSEPH C. ZAVALISHIN**

I, Joseph C. Zavalishin, pursuant to 28 U.S.C. § 1746, hereby affirm that I am over 18 years of age and competent to make the following Declaration.

**Personal Background**

1. I am currently the Senior Vice President, Network Relations for OptumRx, Inc. (“Optum”). Optum, a subsidiary of UnitedHealth Group and affiliate of UnitedHealthcare Services, Inc., is a leading pharmacy benefit manager (“PBM”) in the United States. I have held this position since February 2016. I lead the department responsible for provider and payer-facing relationships with Optum’s business partners, including its network pharmacies. In my department, I oversee approximately 40 Optum employees.
2. Prior to becoming a Senior Vice President at Optum, I was the Executive Vice President of Strategic Contracting & Payer Relations at AxelaCare Health Solutions (“AlexaCare”) from January 2014–February 2016. AxelaCare is a leading provider of home infusion solutions, which Optum acquired in late 2015. In that role, I had responsibility for, among other things, setting strategy and contracting with suppliers, accountable care organizations, pharmaceutical manufacturers, and health systems, as well as other related provider-partnership opportunities.
3. Prior to joining AxelaCare, I worked for Walgreens for approximately four and one-half years, initially as Vice President, Managed Care Contracting (June 2009–January 2013), and then as Vice President, Contracts & Pricing Development (January 2013–December 2013). In that position, I was responsible for negotiating Walgreens’ contracts with PBMs and health plans in order to participate in their pharmacy networks.

4. From February 2004–May 2009, I worked for Aetna. I joined Aetna as Head of Planning & Business Strategy, Medical Products, in which I built a new business unit responsible for business development, setting strategic direction, and leading mergers and acquisitions across multiple products. In October 2006, I became Vice President, Pharmacy Networks, and assumed responsibility for three operations: provider infrastructure, provider relations and contracting, and quality management. During my tenure, Aetna, one of the largest health insurance companies in the United States, operated in-house PBM services to administer the prescription-drug component of Aetna-sponsored health plans, and I was the Vice President in charge of the PBM part of the company. In that position, I oversaw a team of approximately 55 employees.
5. Collectively, I have over 15 years of experience working in the pharmacy and PBM industries. This experience includes but is not limited to: negotiating contracts and managing relationship with network pharmacies, managing pharmacy audit functions, and relationships with both providers of pharmacy related services and the payer community.

**The Aetna/CVS National Pharmacy Services Agreement**

6. In my capacity as Vice President, Pharmacy Networks at Aetna, I negotiated and signed a new national agreement with CVS Pharmacy, Inc. (“CVS”)—the National Pharmacy Services Agreement (Jan. 15, 2009) between CVS and Aetna Health Management, LLC (the “Agreement”). The Agreement set forth the general terms and conditions governing CVS’s relationship with Aetna.
7. CVS and Aetna began negotiating the Agreement as early as 2008. The negotiations involved multiple individuals from both organizations. I recall at least Beth Curran (Director, Network Performance & Evaluation), Alan Maesaka, (in-house counsel) and Erin Schlitt (in-house counsel) participating on behalf of Aetna, and Elizabeth Wingate, Sharon Edmunds, and Tina Egan participating on behalf of CVS.
8. During our negotiations, I learned that CVS was launching a generic drug membership program called Health Savings Pass (“HSP”) which would offer members a set price-point on a specified list of generic medications. The membership-program model was used at the time by several pharmacies to make generic drugs available to price-sensitive shoppers (e.g., Walgreens’s Prescription Savings Club).

**A. § 1.54 – “Usual and Customary Retail Price”**

9. My team and I were aware that CVS did not submit its HSP price as its usual and customary (“U&C”) price on claims for Aetna insureds. First, I had a general awareness that prices charged by pharmacies like CVS and Walgreens in their membership programs were not being submitted as the pharmacy’s U&C price. Second, CVS advised me of this fact in writing.
10. Specifically, during our negotiations with CVS, on or about December 15, 2008, I received an email from CVS’s Sharon Edmunds describing HSP and attaching marketing materials for the program, including a sample membership card and the enrollment form listing the program’s terms and conditions. At the time, Ms. Edmunds was Aetna’s day-to-day contact

for our relationship with CVS. In her email, Ms. Edmunds advised that HSP “does not constitute [CVS’s] Usual and Customary Pricing.” The email and attachments are appended as Exhibit A.

11. I did not find CVS’s position—that the HSP program price was not CVS’s U&C price—surprising or remarkable. By the time CVS had launched HSP, other pharmacies’ membership programs, such as the Walgreens program, were available in the marketplace. To the best of my recollection, Aetna did not require those other pharmacies to submit their program prices as U&C on Aetna claims either.
12. I agreed with CVS that under our Agreement, CVS did not need to submit the HSP program price as its U&C price.<sup>1</sup>
13. Specifically, the Agreement defined “Usual and Customary Retail Price” as: “The cash price less all applicable customer discounts which Pharmacy usually charges customers for providing pharmaceutical services.” Agreement § 1.54. First, because HSP required enrollment and charged a fee, the HSP price was not CVS’s “cash price,” meaning the retail price CVS would charge ordinary customers without a form of prescription benefit (e.g., insurance, a cash discount card, or a membership program). Second, the HSP program price was not an “applicable customer discount,” as we understood that phrase. HSP benefits were available to enrollees in CVS’s program, not to all CVS customers without a form of prescription benefit.

**B. § 4.1.4 – “Pharmacy Obligation to Submit Claims”**

14. The Agreement that I negotiated with CVS made explicit reference to the HSP program. It did so in Section 4.1.1, which states in relevant part:

Pharmacy shall process and adjudicate all claims for Pharmacy Services and is not obligated under this Agreement to process claims under the CVS Health Savings Pass Program.

Agreement § 4.1.1. I recall this provision in particular being the subject of negotiation in late 2008/early 2009.

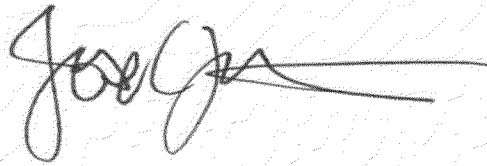
15. In October 2008, Aetna’s then-current draft of the Agreement proposed language in Section 4.1.1 that would have required CVS to “process and adjudicate all claims on-line, regardless of Pharmacy’s own internal discount or reduced price programs.” *See* Draft Contract Sent by J. Zavalishin to E. Wingate (Oct. 20, 2008), at 13 [CVSC-0271054-0271143]. This provision was an attempt to ensure that Aetna would have visibility, for clinical purposes, into all prescriptions filled by beneficiaries of Aetna health plans.

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<sup>1</sup> This position was not different from Optum’s position: CVS was not required under its agreements with Optum to report its HSP program price as its U&C price. *See* Declaration of Michael D. Reichardt (Nov. 20, 2016).

16. I recall CVS asking Aetna to modify the proposed language of Section 4.1.1 to make clear that prescriptions purchased under CVS's HSP program would be exempt from the claim-submission requirement, in the event an Aetna insured had joined HSP and chose to fill a prescription under the program instead of through his or her insurance benefit. Although there was interest in seeing those claims, I understood CVS to have operational barriers that prevented them from submitting those claims to Aetna. Accordingly, we agreed to modify Section 4.1.1 to exclude HSP purchases from those claims required to be submitted to Aetna under the Agreement.

Executed this 22nd day of February, 2017, in Schaumburg, Illinois.

A handwritten signature in black ink, appearing to read "Joe Z", with a long horizontal line extending to the right.

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Joseph C. Zavalishin

# **Exhibit A**

From: Edmunds, Sharon  
Sent: Mon 12/15/2008 4:12 PM (GMT-05:00)  
To: Zavalishin, Joseph C  
Cc:  
Bcc:  
Subject: FW: CVS Health Savings Pass Program -- template for summary of program  
Attachments: 06839RXS08\_WallboardHSP.PDF; HSP\_CardBlue\_v5.pdf;  
CVS02214\_HSPBrochure\_final.pdf

Joe, enclosed is the material/ info we discussed on health savings pass.

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**From:** Egan, Tina L.  
**Sent:** Friday, December 12, 2008 4:56 PM  
**To:** Wingate, Elizabeth S.  
**Subject:** FW: CVS Health Savings Pass Program -- template for summary of program

my template for explaining the program

DRAFT

Thank you for giving CVS/pharmacy the opportunity to review with you the new CVS Health Savings Pass Program that has recently been launched in our markets across the country.

CVS is introducing this program to combat the generic discount programs that have entered the

market place over the last 2 years. Additionally, given the economic changes that have taken place over the last several months, we feel that this is the right time to provide some additional prescription savings to the many cash strapped individuals and families around the country.

Because CVS has a strict policy against price matching, we needed to develop a program that both provides value to compete against the discount pricing already in the market place and provides the economic plan parameters that make the program sustainable for CVS. CVS' program is very different from the discount pricing Wal-Mart and others have introduced and therefore it does not constitute Usual and Customary pricing for our Medicaid clients.

Attached are the materials for the program. This program is being marketed to CVS' customers. There is an enrollment process. Our customer tells us whether she wants to join the program. It is an "opt in" program, and CVS does not automatically enroll anyone into the program. There is a \$10 per person enrollment fee per year. The amount of the enrollment fee was carefully chosen, and plays a key role in the economic sustainability of the program for CVS.

If a CVS customer decides to enroll in the CVS program, and pays the enrollment fee, she can typically receive up to a 90 day quantity of a prescribed drug (from a list of approximately 400+ generic prescription drugs that CVS will offer) for \$9.99. A CVS customer who has enrolled in the program and paid her enrollment fee can also get a 10% savings (up to \$10) for medical services provided at our Minute Clinic, if she pays cash for the Minute Clinic service.

No vouchers or in-store coupons are be provided. CVS pharmacists are not permitted to waive the enrollment fee.

Should you have further questions, please contact me directly.

Tina L. Egan, J.D.

Vice President - HealthCare Regulatory

CVS CAREMARK CORPORATION

office phone - 401.770.4865

fax - 401.652.1218

mobile phone - 401.480.8937

*This email is confidential and intended for the named recipient(s) only. If you receive it in error, please notify sender and delete the communication. Thank you.*



# No prescription coverage?

## No problem.

**\$9.99** for **90** days

.....

**400+** generic prescriptions

introducing the new

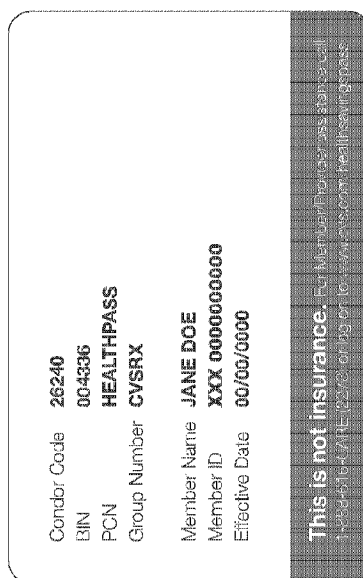
**CVS Health Savings Pass**

sign up and save!

see pharmacist for details

This program is NOT insurance. See program brochure for details.

©2016 CVS PHARMACY, INC.



## Member Information / Enrollment

First Name	Middle Initial	Last Name
Street Address		
City/State	Zip Code	
Male / Female	Date of Birth (month/day/year)	
Telephone		

Email (optional)\*  
 \*By providing your email address, you may receive information about the program and other savings benefits from CVS/pharmacy® and MinuteClinic®.

**Payment Options \$10 annual enrollment,**  
 per person. Please choose your preferred payment option:

**Credit Card** (Please Circle Card Type):  
 Credit | Debit | VISA | MasterCard | AMEX | Discover

First Name | Middle Initial | Last Name  
 (as it appears on credit card)

Credit Card # | Expires

Signature - Your signature gives CVS/pharmacy® permission to automatically charge your credit card the applicable fee each annual billing period.

**Cash** (accepted only at CVS/pharmacy® store)

**Check** made payable to CVS/pharmacy®  
 (enclose with form or pay at store)

## Pharmacist Enrollment Information

Fax completed enrollment form to **1-800-898-4291**  
 Health Savings Pass: **\$10.00 annual fee, per person**

To enroll a new member:

Use Control Code: 25240

BN: U04336

PCN: HEALTHPASS

Update patient profile with:

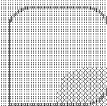
Complete address and phone number

Group ID: CVSPX

Process enrollment fee using NDC 00000-U000-64. Collect the \$10 enrollment fee as indicated. Submission of the above NDC enrolls the customer in the program. Process any new or refill prescriptions for the customer.

**Member ID: XXX 0000000000**

**Prescription savings.  
 Made simple.**



**CVS/pharmacy®**

**Health Savings Pass  
 enrollment form**

**\$9.99 for 90 days**

**400+ generic  
 prescriptions**



**Sign up now**

**to save on prescriptions.**

**plus—10% at MinuteClinic®.**

### CVS/pharmacy® Health Savings Pass Program Terms and Conditions

The CVS/pharmacy® Health Savings Pass program is offered to you by CVS/pharmacy®, the following terms and conditions govern your participation in the CVS/pharmacy® Health Savings Pass program.

#### Description of Benefits:

**Disclosures:** The CVS/pharmacy® Health Savings Pass program is NOT an insurance plan, a Medicare prescription drug plan, or health insurance policy. As a participant in the program, you are entitled to receive discounts on certain pharmacy products and medical services at any CVS/pharmacy® location. The CVS/pharmacy® Health Savings Pass does not provide you with any discounts or benefits at any other pharmacy. The program benefits are subject to change, modification or substitution without notice. In order to receive the benefits after you have enrolled, you are required to present your CVS/pharmacy® Health Savings Pass. You are solely responsible for payment at the time of purchase of the established price for the prescriptions, or ancillary services you purchase under the program. The range of discounts for medical or ancillary services offered under the program will vary depending on the types of products and services. The program does not make and is prohibited from making payments to CVS/pharmacy®, its products or services rendered by you under the program. You are required and obligated to pay for all discounted prescription drugs, medical and pharmaceutical supplies, services and equipment received under the program, but will receive a discount on certain ancillary medical, pharmaceutical supplies, prescription drugs, medical equipment and supplies from CVS/pharmacy®.

**Membership Terms and Cancellation:** This Plan is operated by CVS/pharmacy®. You can call 888-616-CARE (2273) for more information or visit [www.cvs.com/healthsavingspass](http://www.cvs.com/healthsavingspass). To join by mail include complete member enrollment form and check payable to CVS/pharmacy® and mail to CVS/pharmacy®, c/o Alliance HealthCard, 3500 Parkway Lane, Suite 720, Norcross, GA 30092. You must pay the established membership fees when you sign up for the program in order to enjoy the privileges of the CVS/pharmacy® Health Savings Pass. **You may cancel your membership at any time.** If you wish to cancel your membership, you must do so in writing. If you cancel your membership within 30 days from receipt of your membership card and materials, you will receive a full refund of your membership fees. To cancel, mail cancellation letter and your Health Savings Pass membership card to CVS/pharmacy®, c/o Alliance HealthCard, 3500 Parkway Lane, Suite 720, Norcross, GA 30092. Your membership will terminate effective as of the date CVS/pharmacy® receives your notice of cancellation. CVS/pharmacy® may cancel your membership and give you a pro rata refund of the Health Savings Pass program if it is discontinued for any reason. If you fail to pay membership fees, as required, or if you violate any of these Terms and Conditions, CVS/pharmacy® reserves the right to cancel your membership immediately.

Any complaints should be directed to CVS/pharmacy® in writing. After investigation of the complaint, CVS/pharmacy® will provide you with the results and a proposed resolution no later than 30 days after receipt of the complaint.

**Use of Membership:** Your membership and benefits are not transferable or assignable without our express written consent. You and CVS/pharmacy® agree that there are no additional third-party beneficiaries under the Health Savings Pass program.

**No Change in Status:** You understand that your prescription medications are dispensed only in accordance with the order of your physician or other health care provider. Membership in this program does not alter or affect your ability to obtain prescription medication or your responsibility to use prescribed medication in accordance with the directions of your physician or other health care provider and CVS/pharmacy®.

**Confidentiality:** As a pharmacy, CVS/pharmacy® agrees that customer prescription information remains strictly confidential for information about the privacy of patient health information. Please review the CVS/pharmacy® Notice of Privacy Practices at [www.cvs.com/privacy](http://www.cvs.com/privacy). CVS/pharmacy® works with agents and affiliates, also bound to strict confidentiality to perform certain functions under this program. Customer service for the CVS/pharmacy® Health Savings Pass program will be handled by Alliance HealthCard. As an extra service to you as a user of your enrollment in this program, we may send e-mails, direct mailings or telephone you with offers of information related to your pharmacy care and treatment. For these purposes, we may use existing processing agreements as CVS/pharmacy® agents but they are also bound to strict confidentiality. Your privacy is very important to us.

**CVS/pharmacy® Item #: 273051**

0680CPX006

## ..... Your costs. Lowered..... Your needs. Covered.....

Whether you have limited prescription insurance or no coverage at all, the CVS/pharmacy® Health Savings Pass is here to help you save money — the easy way.

It's not an insurance plan, but a prescription savings pass that allows you to save on the medications you and your family need. Plus, you'll receive 10% off at MinuteClinic® inside select CVS/pharmacy® stores.

Enrollment is easy and costs only \$10 annually, per person. You can sign up today and start saving immediately.

Here's how you can save with your Health Savings Pass:

- Only \$9.99 for a 90-day supply of over 400 generic prescriptions (see list)
- 10% off at MinuteClinic® on any regular priced health service or screening\*
- Save at one of our more than 6,300 CVS/pharmacy® locations nationwide.

### Sign up. Start saving.

Simple ways to sign up for savings:

- 1 In-store by filling out this enrollment form and handing it to your CVS pharmacist
- 2 Online at [www.cvs.com/healthsavingspass](http://www.cvs.com/healthsavingspass)
- 3 By phone at 888-616-CARE (2273)

You will receive your CVS/pharmacy® Health Savings Pass in the mail in 7-10 business days. You are able to start saving as soon as you enroll.

### This program is NOT health insurance.

A \$10 per person enrollment fee is required annually. You may cancel your membership within 30 days from receipt of your membership card and materials, for a full refund. Void where prohibited by law. Prices may vary in certain states. \$9.99 pricing based on commonly prescribed doses. List is subject to change without notice. For complete terms and conditions, see store for details.

With your Health Savings Pass, you can get prescription medications and treatments for:

- Allergy
- Arthritis & Pain
- Asthma
- Cholesterol
- Mental Health
- Skin Conditions
- Thyroid Conditions
- Viruses
- Diabetes
- Fungal Infections
- Gastrointestinal Health
- Glaucoma & Eye Care
- Heart Health & Blood Pressure
- Nutritional Health
- Women's Health
- And many more (see complete list — available at pharmacy or online)



### Easy. Accessible. Affordable.

We're doing what we can to make health care a little easier and more affordable for busy people like you. With the CVS/pharmacy® Health Savings Pass, you can save 10% at MinuteClinic® on any regular priced health service or screening.\* Our board-certified practitioners are trained to diagnose and treat common family illnesses as well as give vaccinations and health screenings.

- No appointment necessary
- Open 7 days a week, including evenings
- Most services starting at \$59

\* Up to \$10 per person, per visit. MinuteClinic® discount not available in Florida.

## Your questions. Answered.

**Q... How do I know if the Health Savings Pass is right for me?**

**A...** If you don't have prescription drug coverage — or if your coverage is limited — you could gain significant savings. If your current prescription is one of the over 400 generic medications in the program, you can enroll today and save.

**Q... How much does the Health Savings Pass cost?**

**A...** The cost is only \$10 annually, per person. Your membership will be automatically renewed each year and you will be charged the applicable fee.

**Q... Will I always pay \$9.99 for each prescription?**

**A...** You will pay \$9.99 for a 90-day supply of the 400+ generic medications identified on the current list. For 90-day supply quantities which exceed the typically prescribed 90-day quantities, the amount may be pro-rated. Prices may vary in certain states. See your pharmacy for details.

**Q... Can I use my Health Savings Pass with my current prescription coverage plan on the same prescription or medical service?**

**A...** You must either use your Health Savings Pass or other insurance. The CVS/pharmacy® Health Savings Pass cannot be used in conjunction with other insurance on the same prescription.

**Q... Are generic medications the same as brand name medications?**

**A...** Yes. Generic medications are safe, effective, and approved by the FDA. They work the same way in your body as brand name medications.

**Q... If I have more questions, who do I ask?**

**A...** Ask your pharmacist or call 888-616-CARE (2273).